To: jweil@blm.gov[jweil@blm.gov]
From: Andy Kerr
Sent: 2017-08-28T11:14:00-04:00
Importance: Normal
Subject: 08/25/17 Public Lands Blog
Received: 2017-08-28T11:15:11-04:00

It's the National Monument Act of 1906, not the Act formerly known as Antiquities.

Andy Kerr's *Public Lands Blog* #60

View this email in your browser

What's in a Name? Preserving National Monuments Versus Antiquities Only

Back in the day, an Act of Congress, signed into law by President Theodore Roosevelt on June 8, 1906, soon after became commonly known as the "National Monument Act." The more recently used name of the "Antiquities Act of 1906" must now be changed back to "National Monument Act of 1906." Here's why.

President Trump, Secretary of the Interior Ryan Zinke, and other forces of darkness (FODs, industrial exploitative interests with a business model that requires the abuse of public lands) seek to eviscerate several national monuments proclaimed by presidents Clinton, G. W. Bush, and Obama. These parties are abusing, among other things, the term *antiquities*, in an effort to bamboozle the public out of a precious and irreplaceable heritage. The FODs are hoping to politically justify the diminution or elimination of national monuments based on an extremely narrow reading of the National Monument Act—the federal statute enacted by Congress in 1906 that gave authority to the president to proclaim national monuments on federal public lands—as applying only to antiquities. They are as wrong as they are greedy.

Don't get me wrong. I love antiquities. Some of my best friends are antiquities. However, I wouldn't want the National Monument Act of 1906 to be limited just

to antiquities.

Henceforth, all in the conservation community should make reference in their speaking and writing to the National Monument Act of 1906. This name is a more accurate descriptor of the statutory provision and was, in fact, commonly used by legal scholars and others in at least the first two decades after 1906. Today, as back in the day, the public better understands and appreciates national monuments more than antiquities.

What follows is a two-part rebuttal of the FODs' antiquated argument.
1. While all antiquities are objects, not all objects are antiquities.
2. Historical precedent exists for again calling the 1906 statute the National Monument Act.

The first part is a relatively straightforward analysis of statutory construction (for the record, I'm not a lawyer, but I've sometimes been accused of being one), while the second part is way deep in the weeds but interesting to students of history and useful to advocates of policy. If you are bored and/or your mind just doesn't process such things, you can stop reading at the end of this paragraph. The all-important thing is to hereafter only use the name National Monument Act when referring to the act formerly known as Antiquities.

1. While All Antiquities Are Objects, Not All Objects Are Antiquities.

President Trump ordered Interior Secretary Ryan Zinke to "review" all large national monuments proclaimed since 1992 by presidents Clinton, Bush, and Obama. While Zinke has announced that he won't screw with several—coincidentally, those that don't have significant oil and gas, minerals, timber, grass and/or are not in Utah—he has recommended in a secret report that President Trump eviscerate at least three national monuments: Grand Staircase-Escalante (UT; 1996), Cascade-Siskiyou National Monument (OR & CA; 2000, expanded 2017) and Bears Ears (UT; 2016).

In the middle ground is Pilot Rock, the most prominent landmark within the Cascade-Siskiyou National Monument in Oregon and California. Source: USDI Bureau of Land Management

A favorite argument of the FODs that want to eviscerate these national monuments is that the statute says:

The limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the ***objects*** *to be protected.* [emphasis added]

This language is in the second paragraph of the second section of what is now commonly called the Antiquities Act of 1906. The National Monument Act only authorizes the President to proclaim national monuments to protect specified "objects." The FODs conflate "antiquities" ("an object, building, or work of art from the ancient past" is a typical dictionary definition) with "objects" that are specifically defined in the first paragraph of the same section of the National Monuments Acts as "historic landmarks, historic and prehistoric structures, and **other objects** of historic or scientific interest" [emphasis added]. Landmarks and structures are certainly antiquities, but the National Monument Act of 1906 also intends to protect "other" historic or scientific objects as well.

The minimum-size gambit has lost in court on multiple occasions. What the FODs have not been able to persuade judges to do, they now hope a fellow FOD in the White House will do.

2. Historical Precedent Exists for Again Calling the 1906 Statute the National Monument Act.

Most actions of Congress are individual bills that have become individual public laws. The public laws for each two-year session of Congress are published together sequentially in volumes entitled *Statutes at Large*. Major statutes, or portions thereof, are "codified" in the United States Code, in which nonessential text of the public law, as first published in the *Statutes at Large*, has been stripped out by disinterested legal technicians in the Office of the

Law Revision Counsel in the U.S. House of Representatives.

S.4096 of the 59th Congress (1905–1906), entitled “An Act for the Preservation of American Antiquities,” became the 209th public law of that congress (P.L. 59-209) after enactment by Congress and signature by the president. It was then published in the *Statutes at Large* as Chapter 3060 on page 225 of the 34th volume (34 Stat. 225). The official title was soon superseded by common use to become the National Monument Act.

As the United States Code (U.S.C.) is organized by broad topic area and then particular subject matter rather than date of enactment, it is easy to find all pertinent law on a particular subject. Section 2 of P.L. 59-209 has been codified at 54 U.S.C. §320301 with the title “National Monuments.” The U.S.C. didn’t come into existence until 1926.

Before computers, laws were actually published on paper and in books. To aid what can now be done in seconds with a simple online search, whole reference books were published to point lawyers, bureaucrats, and citizens to the actual provisions of law they were interested in. Prior to the U.S.C., legal editors toiled through the *Statutes at Large* and indexed each law by particular subject. Thanks to Google’s digitizing the world’s books, I came across a multivolume set entitled *Federal Statutes Annotated (Second Edition): Containing All the Laws of the United States of a General, Permanent and Public Nature in Force on the First Day of January, 1916*, “compiled under the editorial supervision of William M. McKinney.” This unofficial compilation was in common use until succeeded by the official United States Code in 1926.

A search through this multivolume set shows the following.

In Volume 1 (Agriculture to Bigamy), the listing “antiquities” says: “See Public Parks.”

In Volume 6 (Judiciary [concluded] to Passports), the listing “National Monument Preservation Act” says: “See Public Parks.”

In Volume 8 (Postal Service to Replevin) under “Public Parks,” we find the following (note the fine-print editorial note between sections 1 and 2, the actual statutory language):

In Volume 12 (Tables of Statutes, General Index and Indexes to Constitution), an index of “Laws Designated by Popular Name” lists “National Monument Act (Preservation of Antiquities).” The listing for “Antiquities,” among other references say “National Monument Act.” I could find no reference in any of the twelve volumes or the three supplements (1918, 1920 and 1921) to an “Antiquities Act.”

I rest my case.

Link to Original *Public Lands Blog* Post: http://www.andykerr.net/kerr-public-lands-blog/2017/8/25/whats-in-a-name-preserving-national-monuments-versus-antiquities-only

Andy Kerr's *Public Lands Blog* RSS Feed: feed://www.andykerr.net/kerr-public-lands-blog/?format=rss